IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 9 of 1997
With
INCOME TAX REFERENCE No. 10 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S.KRISHNA TEXTILES - Applicant(s)
Versus
COMMISSIONER OF INCOME TAX - Respondent(s)

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Appearance :
MR MANISH J SHAH for Applicant(s) : 1,
MR MANISH R BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 12/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. This order shall dispose of I.T.R. No. 9/97 and I.T.R. No. 10/97.

2. The Income Tax Appellate Tribunal, Ahmedabad Bench “C”, at the instance of the assessee has referred the following questions for opinion of this Court in both the Income Tax References No. 9 and 10 of 1997, which arise out of ITA No. 507/Ahd/1993 relating to Assessment Year 1988-89 and ITA No. 1837/Ahd/94 relating to Assessment Year 1987-88 respectively.

    1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Excise Duty collected by the assessee on grey fabrics was in the nature of trading receipts and hence taxable u/s. 43-B of the Act?
    2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the bank guarantee furnished by the assessee which was taken by the assessee by depositing the amount in bank fixed deposit as margin money did

not tantamount to actual payment and so Section 43-B is applicable?

3. In relation to the very same assessee, identical questions were referred in ITR 106/96. The said questions have been answered by us in affirmative holding that the excise duty collected by assessee on grey fabrics was in the nature of trading receipt and was taxable under Section 43-B of the Act and that bank guarantee furnished by the assessee which was taken by the assessee by depositing the amount in bank fixed deposit as margin money did not amount to actual payment, therefore, Section 43-B is applicable. In view of the decision on identical issue between the same parties, we are not required to enter into the details of each and everything. Both the questions are answered against the interest of the assessee and in favour of the Revenue. The References stand disposed of. No costs.

[R.S. GARG, J.]

[D.H. WAGHELA, J.]

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